

Intermountain Reinforcing Steel (“IRS” hereafter) asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of IRS’s request for a hearing in the above-entitled matter. In filing its request for hearing, IRS sought to contest the Industrial Accidents Division’s assessment of penalty against IRS pursuant to §34A-2-211(2) of the Utah Workers' Compensation Act, for failure to obtain workers’ compensation insurance coverage.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12, § 34A-2-211(4)(c) and § 34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Section 34A-2-211(2) of the Utah Workers’ Compensation Act authorizes the Industrial Accidents Division to impose a penalty against employers who fail to provide workers’ compensation coverage for their employees. Employers who disagree with a penalty so assessed can request an evidentiary hearing before an ALJ.

On August 25, 2004, the Division assessed a penalty against IRS, a Utah corporation, for failure to obtain workers’ compensation coverage for its employees.¹ On August 27, 2004, Justin Ward, President of IRS, requested an evidentiary hearing to challenge the penalty. Judge Marlowe scheduled a hearing for January 4, 2005, but then rescheduled the hearing when she learned that IRS had not engaged an attorney to represent it at the hearing. Judge Marlowe issued a Notice of Cancellation that specifically informed IRS of the requirement that it be represented by counsel.

The hearing was rescheduled for May 26, 2005. The Notice of Hearing advised the parties they could request rescheduling of the hearing, and explained the procedure for making such a request. Nevertheless, IRS failed to appear. Judge Marlowe entered IRS’s default and dismissed its application for hearing.

IRS has now filed a motion for review of Judge Marlowe’s decision. IRS alleges that it failed to attend the hearing because it believed this matter could be resolved informally. IRS asks that it “be permitted to take acceptable corrective action and negotiate a penalty with the Utah Labor Commission that will permit IRS Corp to remain in business.”

DISCUSSION

The precise question before the Appeals Board is whether Judge Marlowe appropriately

¹ The employees in question were IRS corporate officers. Pursuant to §34A-2-1034(4) of the Utah Workers’ Compensation Act, corporate officers are considered employees of the corporation until the corporation affirmatively excludes them from that status. Because IRS did not exclude its corporate officers, the Division considered them to be IRS employees. The Division therefore imposed the statutory penalty against IRS for its failure to provide workers’ compensation coverage for those employees.

entered IRS's default and dismissed its request for hearing after IRS failed to appear for hearing. The Appeals Board has considered IRS's motion for review but finds nothing therein to warrant relieving IRS from its default. On that basis, the Appeals Board affirms Judge Marlowe's decision and denies IRS's motion for review.

The Appeals Board notes IRS's request that it be allowed to take corrective action and negotiate with the Industrial Accidents Division regarding the penalty imposed in this proceeding. The Appeals Board sees no reason why IRS cannot propose such negotiations to the Division. The Appeals Board understands that the Division may consider the circumstances surrounding IRS's failure to obtain workers' compensation coverage and may adjust the penalty to account for such circumstances.

ORDER

The Appeals Board affirms Judge Marlowe's decision and denies IRS's motion for review. It is so ordered.

Dated this 23rd day of March, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch